IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

LPA-1263-2015(O&M)
Date of decision : 15.10.2015

Haryana Agro-Industries Corporation Limited and another

... Appellants

Versus

Mussadi Lal Garg

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Ravi Kant Sharma, Advocate
for the appellants.

RAJIVE BHALLA, J.(ORAL)

CM-2694-LPA-2015

Prayer in this application is to condone delay of 445 days in filing the appeal.

Heard.

In view of averments in the application and arguments addressed, application is allowed and delay of 445 days in filing the appeal is condoned.

LPA-1263-2015

The appellant challenges order dated 26.02.2014 allowing the writ petition filed by respondent and as a consequence setting aside the order directing recovery of ₹1,75,689/- from the retiral benefit of the respondent. The appellants also challenge order dated 08.01.2015 dismissing a petition for review.

Counsel for the appellants submits that the appellants are neither Class-III nor Class-IV employee and even otherwise as held by Hon'ble the Supreme Court of India in ***State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc.2015(1) SCT 195*** the order setting aside recovery should be confined to five years.

We have heard counsel for the appellants, perused the impugned order but find no reason to interfere.

The Hon'ble Supreme Court of India while considering the question whether recovery could be made from beneficiaries of a mistake committed by an employer, examined judgments in ***Bihar SEB v. Bijay Bahadur, (2000) 10 SCC 99; Chandi Prasad Uniyal v. State of Uttarakhand, (2012) 8 SCC 417; Col.B.J. Akkara (Retd.) v. Govt. of India (2006) 11 SCC 709; Punjab National Bank v. Manjeet Singh, (2006) 8 SCC 647, Purshottam Lal Das v. State of Bihar, (2006) 11 SCC 492; Sahib Ram v. State of Haryana, 1995 Supp.(1) SCC 18, Shyam Babu Verma v. Union of India, (1994) 2 SCC 521; Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC 475; Union of India v. M.Bhaskar, (1996) SCC 416; and V. Ganga Ram V. Director (1997) 6 SCC 139*** as held as follows:-

> *"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:*

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

A perusal of the above extract reveals that Hon'ble the Supreme Court of India held that it is not possible to postulate all situations of hardship, where payments have mistakenly been made by the employer, in excess of entitlement of an employer and thereafter summarized a few situations, where recovery by the employers would be "impermissible in law". The Supreme Court, in our considered opinion, has not laid down any rigid principle of law that recovery would only be permissible in situations referred to in the aforesaid extract but in essence set out that in situations other than those referred to above, the matter would to be decided on its own facts.

A due consideration of the facts of the present case, as noticed in the order allowing the writ petition, reveal that the benefit of advance increments was conferred in the year 1986 and continued upto 2007. The learned Single Judge has considered the question of recovery and held as follows:-

> *"10. As noticed above, once the petitioner has retired, it would not be appropriate to recover the said amount, in view of the principle laid down above, as this Court is satisfied that there was no misrepresentation, on part of the petitioner. Accordingly, the order of recovery dated 11.07.2008 (Annexure P7) is quashed. In case the amount has already been recovered from the petitioner, the said amount be refunded, within a period of 4 weeks, from the receipt of a certified copy of the order."*

The appellants thereafter filed a petition for review which was dismissed by holding as follows:-

> *"As noticed, vide the judgment, which is now sought to be reviewed, this Court had taken into consideration the judgments of the Apex Court in* ***Col. (Retd.) B.J.Akkara Vs. The Government of India & others 2006 (11) SCC 709****,* ***Syed Abdul Qadir Vs. State of Bihar 2009 (2) RSJ 416*** *and* ***Chandi Prasad Uniyal & others Vs. State of Uttarakhand & others (2012) 8 SCC 417*** *and keeping in view the factum that recovery was on account of advanced increments which had been directed to be paid vide the order dated 24.04.1986, on account of exceptionally good work done by the petitioner for settling the accounts with dedication and devotion. The advance increments were to be adjusted in future increments and he continued to draw the said increments without any adjustments from the year 1986 till the recovery notice was issued on 01.05.2007, which is apparently only after the removal order was passed on 05.04.2007, as would be clear from para 9 of the present review application. The mistake was on the part of the office who had failed to adjust the amount and paid the*

extra amount for over 20 years and thus, there was no misrepresentation or concealment by the petitioner.

Thus, it is apparent that the respondent-Corporation was launching a witch hunt against the petitioner and was trying to rake up all issues, since even thereafter, a subsequent order of removal was passed on 20.05.2009. In such circumstances, clauses (iii) & (v) would come into play, as laid down in the case of ***Rafiq Masih*** *(supra) and this Court is of the opinion that the recovery on the basis of the order dated 11.07.2007 (Annexure P7) is not justified."*

Finding no error in the impugned orders or merit in the appeal, we dismiss the same, accordingly.

(RAJIVE BHALLA)
JUDGE

(REKHA MITTAL)
JUDGE

October 15, 2015.
Davinder Kumar